

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

THOMAS FULLER,

Plaintiff,

v.

CHRISTOPHER ROGNER, *et al.*,

Defendants.

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CASE NO. 06-CV-13940-BC

DISTRICT JUDGE THOMAS LUDINGTON  
MAGISTRATE JUDGE CHARLES BINDER

**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION  
IN PRISONER CIVIL RIGHTS CASE**

**I. RECOMMENDATION**

For the reasons set forth below, **IT IS RECOMMENDED** that this case be *SUA SPONTE* **DISMISSED** because it is a duplicate of case number 06-CV-14352, which is proceeding before this Court and in which several defendants have already been served.

**II. REPORT**

On September 7, 2006, *pro se* Plaintiff Thomas Fuller submitted a prisoner civil rights complaint accompanied by an application to proceed without prepayment of fees. On September 14, 2006, the application was granted (Dkt. 4) and Plaintiff was ordered to submit additional copies of his complaint for service on the defendants. (Dkt. 5.) The case was assigned to U. S. District Judge Thomas Ludington, who referred it for pretrial preparation to the undersigned Magistrate Judge. (Dkt. 6.) It appears that when Plaintiff submitted the required copies to the Court on October 3, 2006, they were docketed as a new case, assigned to U.S. District

Judge Marianne Battani, and given case number 06-CV-14352. Plaintiff was granted *in forma pauperis* status in that case and the complaint was served on the defendants. Five defendants executed and returned waivers of service (case no. 06-CV-14352, Dkts. 10-14), and Judge Battani ultimately transferred the case to this division as a possible companion case to the instant case. (case no. 06-CV-14352, Dkt. 16.)

There being two identical cases on the docket, one where the marshals have effected service and one where they have not, I suggest that the case where service has not been accomplished be dismissed. Thus, I suggest that the District Court enter an order dismissing this case.

### **III. REVIEW**

The parties to this action may object to and seek review of this Report and Recommendation within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed.2d 435 (1985); *Howard v. Secretary of HHS*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). The parties are advised that making some objections, but failing to raise others, will not preserve all the objections a party may have to this Report and Recommendation. *Willis v. Secretary of HHS*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

s/ Charles E Binder

CHARLES E. BINDER  
United States Magistrate Judge

Dated: December 20, 2006

**CERTIFICATION**

I hereby certify that this Report and Recommendation was electronically filed this date, electronically served on Peter Peacock, served on Thomas Fuller by first class mail, and served on District Judge Ludington in the traditional manner.

Date: December 20, 2006

By s/Jean L. Broucek  
Case Manager to Magistrate Judge Binder